SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 208.

HOBART C. DUGGER AND ALICE G. SPRAGUE, PLAINTIFFS IN ERROR,

vs.

HENRY A. TAYLOE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 Supreme Court of Alabama. December Term, A. D. 1881.

TUESDAY, *Dec. 6th*, 1881.

Be it remembered that a regular term of the supreme court of the State of Alabama was begun and holden according to law at the Capitol in the city of Montgomery, on Tuesday, the sixth day of December, A. D. eighteen hundred and eighty-one—it being the first Tuesday of said month.

Present and presiding as judges of said court: Hon. Robert C. Brickell, chief justice, Hon. George W. Stone, associate justice, Hon. Henderson M. Somerville, associate justice.

STATE OF ALABAMA, *County of Hale*:

To any sheriff of the State of Alabama, Greeting:

You are hereby commanded to summon Henry A. Tayloe and Robert L. Maupin to appear at the next term of the circuit court, to be held for said county at the place of holding the same, then and there to answer the summons and complaint of Hobart C. Dugger and Alice V. Sprague, who is a married woman, the wife of Myrom T. Sprague.

2 Witness this 27th day of May, A. D. 1881.

V. BOARDMAN, *Clerk.*

Complaint.

HOBART C. DUGGER & ALICE V. SPRAGUE, Plaintiffs,

vs.

H. A. TAYLOE & ROBERT L. MAUPIN, Defendants.

The plaintiffs sue to recover the following tract of land, to wit, the southeast quarter of section thirty, and all of section thirty-one, lying north of the Selma and Meridian railroad, now known as the Alabama Central railroad, all in township eighteen of range four east, containing one hundred and ninety-six acres, more or less, situated in Hale county, Alabama, and bounded on the north by the lands of J. T. Collins, on the east by the lands of Adele L. Dubose, of which they were possessed before the commencement of this suit; and after such possession accrued, the defendants entered thereupon and unlawfully withholds and detains the same, together with twenty-five hundred dollars for the detention thereof. The said interest of the said Alice V. Sprague, being of the corpus of her statutory separate estate.

THOS. R. ROULHAC,
Att'y for Plaintiffs.

Received in office this 27th day of May, A. D. 1878. Executed this 1st day of July, A. D. 1878, by leaving a copy of the within summons & complaint with H. A. Tayloe, defendant.

W. N. KNIGHT, *Sheriff.*

3 Not found as to Robert L. Maupin, this 1st day of July, 1878.

H. C. DUGGER *et als. vs.* HENRY A. TAYLOE *et al.*

In Hale County Circuit Court.

1st. The defendant, Henry A. Tayloe, for answer to said complaint says, that the plaintiffs' right of action for the recovery of the lands sued for was barred by the Statute of Limitation of ten years at the time of the commencement of this suit.

2nd. The said Henry A. Tayloe comes and defends said action, and says that he, under a claim of right, has been in the possession of said lands, openly and notoriously claiming the same adversely to the plaintiffs in this suit for more than ten years prior to the commencement of this suit, to wit, since the 1st day of Jan'y, 1865, wherefore he prays judgment that the plaintiffs should not recover.

3rd. Said Henry A. Tayloe further says, that in right of his wife, Narcissa Tayloe, and her children, for more than ten years prior to the commencement of this suit, he has been in the possession of the said lands, under a claim of right thereto, and under color of title, holding & claiming them adversely to the plaintiffs and every other person, wherefor he prays judgment of the court that the plaintiffs should not further have or maintain their said action.

4th. For a further defense the defendant, Henry A. Tayloe,

4 pleads the general issue, "Not Guilty."

WEBB & TUTWILER,
Pl'ffs Att'ys.

Filed in open court this 15th day of Oct., 1878.
V. BOARDMAN, *Clerk.*

Certificate of Reversal.

The Supreme Court of Alabama. December Term thereof, A. D. 1880.

To the clerk of the circuit court of Hale county, Greeting:

Whereas the record and proceedings of said court in a certain cause lately pending in said circuit court between Henry A. Tayloe and Hobart C. Dugger *et als.*, wherein by said court at the — term 18—, it was considered adversely to said Henry A. Tayloe, were brought before our supreme court, by appeal, pursuant to laws, on behalf of said Henry A. Tayloe.

Now it is hereby certified that it was thereupon considered by our supreme court on the fourteenth day of April, 1881, that said judgment of said circuit court be reversed and annulled, and the cause remanded to said court for further proceedings therein.

It is also considered that the appellees pay the costs accruing in said supreme court and in the court below.

Witness John W. A. Sanford, clerk of said supreme court, the 18th day of April, 1881.

JOHN W. A. SANFORD,
Clerk, Supreme Court of Alabama.

5 Received in office, pr. mail, April 21st, 1881.
V. BOARDMAN, *Clerk.*

Trial and Judgment.

HOBART C. DUGGER *et al. vs.* HENRY A. TAYLOE, *et al.*

OCTOBER 12*th*, A. D. 1881.

In this cause came again the parties in person and by attorney, and issue being joined upon the record and pleadings heretofore filed, thereupon came a jury of good and lawful men, to wit, Jason Thigpen and eleven others, who being duly empaneled and sworn, well and truly the issue joined to try, and a true verdict render according to the evidence, upon their oaths do say, "We, the jury, find for the defendant." It is therefor considered by the court that the plaintiffs take nothing by their suit, but that the defendant go hence and recover of the plaintiffs their costs in this behalf expended, for which execution may issue.

Appeal Bond.

Circuit Court of Hale Co., Ala. Fall Term, 1881.

H. C. DUGGER *et al., Pl'ffs,* } Ejectment.
vs.
H. A. TAYLOE, *Def'd't.* }

In the above-entitled cause plaintiffs having prayed an appeal from the judgment rendered at this term. We the subscribers hereto acknowledge ourselves security for all costs of appeal to the supreme court at Montgomery.

H. C. DUGGER. [L. S.]
ALICE V. SPRAGUE, [L. S.]
Per W. W. DUGGER, *Att'y.* [L. S.]
W. W. DUGGER. [L. S.]
6 A. G. DUGGER. [L. S.]

Filed October 21st, A. D. 1881.

V. BOARDMAN, *Clerk.*

Bill of Exceptions.

In the Circuit Court for Hale County. Fall Term, 1881.

W. W. DUGGER *et al. vs.* HENRY A. TAYLOE.

Be it remembered that when this cause came on to be tried the following proceedings were had, to:

The plaintiffs introduced and read in evidence the admission of what Mrs. Alice G. Dugger would testify to if present.

In Hale Circuit Court. Fall Term, 1881.

HOBART C. DUGGER *et al. vs.* HENRY A. TAYLOE.

Testimony of Mrs. A. G. Dugger.

It is admitted in this cause that Mrs. Alice G. Dugger would swear, if present, that she is the widow of the late Henry Dugger, of Marengo

county, and was the administratrix of said Henry Dugger's estate, appointed by the probate court of Marengo county, and as such administratrix, sold on the 19th day of November, 1860, the land sued for in this action for division among the heirs-at-law of said Henry Dugger, together with certain other lands adjoining them, on a credit of one, two, and three years; that W. P. Bocock bid in the same by an agent, and gave his notes for the purchase chase money thereof, payable November 19th, 1861, 1862, & 1863, respectively; that payment of said notes was made as follows: The first, in Confederate money, without objection on her part, the
7 second of said notes partly in Confederate notes and partly in Confederate bonds; and the third entirely in Confederate bonds, which she refused to receive in payment, until she was notified by the Confederate tax collector that the note would be taxed as gold, and she would have to pay taxes on it in gold when she consented to receive them, and gave up to Bocock the third note for the land; that she, as administratrix, had no notice of any sort of the petition filed by Bocock on March 21st, 1868, for a title to the said lands, or of the decree of the probate court of Marengo county, of that date ordering H. A. Woolf to make titles to said Bocock, and that she had never reported to the probate court of Marengo county that the purchase-money had been paid, other than the final account stated as administratrix in the Marengo probate court at the April term, 1864; that she has the Confederate bonds received in payment of the third note in her possession now, and she has never paid them to any one; that the ages of her children, who are plaintiffs in this suit, are as follows:

Alice V. Sprague, born Aug. 31st, 1847.

Hobart C. Dugger, born July 29th, 1849.

Filed in open court, 11th Oct., 1881.

V. BOARDMAN, *Clerk.*

It is admitted that the lands sued for were situated in Hale county, and that their reasonable yearly rental value was $84, & that pl'ffs were each entitled to one-seventh of the lands described in the complaint. The plaintiff then read in evidence the
8 deposition of Willis P. Bocock.

W. P. Bocock's Deposition.

STATE OF ALABAMA, *County of Hale:*

To Capt. John H. Prince, Greeting:

Know ye that we, trusting to your fidelity and circumspection, have appointed and do hereby appoint, empower, & request you to take the deposition, upon the interrogatories hereto attached, of Willis P. Bocock, witness on part and behalf of the defendants in a certain suit now pending in the circuit court of Hale county aforesaid, wherein W. W. Dugger *et al.* are plaintiffs, and Henry A. Tayloe *et al.*, defendants.

You will, therefore, please call before you, at some convenient time and place, the above-named witness, and after he shall have

been duly sworn, examine him upon oath, upon each and every of the interrogatories and cross-interrogatories hereto attached, and his answers thereto you will carefully commit to writing, which you will cause the said witness to sign, and which you will certify from under your hand & seal. Seal up the same, together with this commission, & transmit the whole to the clerk of the circuit court of the county, aforesaid.

Witness Volney Boardman, clerk of said court, at office, at Greensboro, this 17th June, 1879. Issued, 17th of June, A. D. 1879.

V. BOARDMAN, *Clerk.*

In Circuit Court for Hale County, Alabama.

W. W. DUGGER *et al. vs.* HENRY A. TAYLOE *et al.*

9 Interrogatories to be propounded to Willis P. Bocock, the answers to which, when taken, are to be used as evidence on the trial of a certain cause pending in the circuit court of Hale county, Alabama, wherein W. W. Dugger, Reuben H. Dugger, L. White Dugger, and Alice G. Dugger, are plaintiffs, and Henry A. Tayloe, Robert L. Maupin, and Benjamin F. Hatch, are defendants, for and on behalf of said defendants.

1st Interrogatory:

State whether or not you became the purchaser in November, 1860, of certain lands belonging to the estate of Henry Dugger, deceased, sold under an order of the probate court of Marengo county? If yea, how much did you agree to pay for the same, and in what installments? Has the purchase money for said land been paid? If yea, give a statement showing the time and manner of the payment of the notes given for the said purchase money. In what kind of money was the first note paid? If you state that said note or any part thereof was paid by a draft, state on whom such draft was drawn, the amount thereof, and what kind of money you had at the time in the hands of the drawee.

2nd Interrogatory:

Explain when, how, and in what kind of funds the other notes were paid. Who was present when they were paid, and to whom was payment made? Did Mrs. Alice G. Dugger make any objection to the kind of money offered by you in payment of said notes; if yea, when did she so object, and what was the ground of her objection? Were any threats or pressure used by you or any one to induce the said Mrs. Dugger to receive payment of
10 any of said notes in Confederate Treasury notes or bonds? State whether any, and which of the said Mrs. Dugger's children were living with her at the time the last note was paid, and whether or not she consulted with them or him as to receiving Confederate Treasury notes or bonds.

3rd. Interrogatory:

Were the said notes given for the purchase money of said lands

surrendered to you as the same were severally paid; if yea, was any, and what receipt endorsed on the same, and by whom? If you have said notes in your possession attach the same to your answer to these interrogatories.

4th Interrogatory:

When did you get a deed or conveyance to the lands aforesaid? If you have said deed in your possession attach the same or a copy thereof to your answers to these interrogatories.

5th Interrogatory:

State anything you may know that will benefit the defendant in this suit.

W. H. TAYLOE,
J. T. JONES,
Att'ys for Defendants.

In Circuit Court for Hale County, Alabama.

W. W. DUGGER *et al. vs.* HENRY A. TAYLOE *et al.*

Cross-interrogatories to be propounded to Willis P. Bocock, a witness for the defendants in the above-entitled cause.

11 X int. 1st. If, in any answer to the 4th direct interrogatory, you say that you got a deed or conveyance to said lands, from whom didyou get it, by whom was it executed, & under what authority? If you say by order of the probate court of Marengo county, upon whose application was such order made; and, if upon yours, what notice, if any, did you give to Mrs. Alice G. Dugger, administratrix of Henry Dugger, deceased, or to any of the heirs of said Henry Dugger? If you say none, why did you not give such notice?

X interrogatory 2nd:

Was any person interested with you at any time in the purchase of the Dugger lands; if so, what interest did such person or persons have?

THOS. R. ROULHAC,
Att'y for Plaintiffs.

STATE OF ALABAMA, *Hale County:*

Deposition of Willis P. Bocock, a witness sworn on the 21st day of July, 1879, at his residence in said State and county, under and by virtue of a commission issued out of the circuit court of Hale county, in a certain cause therein pending between W. W. Dugger *et al.* plaintiffs & Henry A. Tayloe *et al.* defendants.

The said WILLIS P. BOCOCK, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, does depose and say, as follows:

To the first direct interrogatory he says: I did become the purchaser in November, 1860, of the lands mentioned in said inter-
12 rogatory, sold as therein stated, under an order of the probate

court of Marengo Co. At the time of said sale I was in the State of Virginia and did not reach my home in Marengo Co., Alabama, now Hale, till about the 26th Dec., same year. I had authorized my wife, Mrs. M. S. Bocock, to act for me in my absence in making said purchase.

On my arrival I found the following state of facts: the sale had taken place on the 19th Nov., 1860; the land described by numbers as the southeast quarter of section 30, and the north half and southwest quarter of section 31, all in township 18, range 4, east, and rated at 640 acres (although by land office quantities it is 639 acres) had been cried out to me as the highest bidder at $45.01 per acre, making $28,806.40.

This purchase-money payable in three equal annual installments bearing interest from day of sale; three notes, one for each of said installments, had been executed to Mrs. Alice G. Dugger, administratrix of Henry Dugger, dec'd, by my said agent in my name, and by two sureties, as the order of sale required, all dated 21st Nov., 1860, and falling due 19th Nov., 1861, 19th Nov., 1862, and 19th Nov., 1863, respectively, each note being for an amount equal to one-third of the purchase-money as above stated, and interest on that third from day of sale till said note fell due, viz:

1st note, due 19th Nov., 1861, for $10,370.30⅓.

2d note, due 19th Nov., 1862, for $11,138.47⅓.

13 3d note, due 19th Nov., 1863, for $11,906.64⅓.

And these notes have all been paid, as will be shown hereafter.

My purchase and the facts which I have stated as existing on my arrival, will, I think, appear by the record of the suit and proceedings in Marengo probate court, under which the sale took place. Said record will also show that Mrs. Dugger's proceedings as to said sale were reported and confirmed.

Following the order of time and for the better understanding of what I have to state after, I deem it proper to make here the following statement:

Before and at the time of said sale, and with my approval, it was understood between the defendant, Henry A. Tayloe, and my said agent, that he was to have the benefit of the purchase of so much of said land as lies north of the centre of the railroad running through said tract on complying with terms of sale as to that part; but as it turned out that under the order and terms of sale, a separate sale of each of the parcels (quantities unascertained) could not be reported to the court, and as the whole had been cried out to me, notes for the whole purchase-money were required to be executed according to the terms of the sale, by me, or on my behalf, which was done as above stated, and a memorandum in writing was signed by my wife as to said Henry A. Tayloe's right in this behalf. He, the said H. A. Tayloe, at once took possession of that part of the land lying north of the railroad, and I have never had any possession thereof.

14 After my return to Alabama in December as above stated, namely, on the 23rd of February, 1861, arrangements were

Payments:

Am't p'd her by H. A. Tayloe, for me in full acc. of W. H. & H. A. Tayloe's first land note to me, due 19th Nov., '61—

Principal	3,176 38	
Balance of interest to date (some p'd before)	89 12	
		3,265 50

This, I suppose, was in Confederate Treasury notes, but not remembered.

Paid by W. P. B. Baker, Lauler, & Co., acceptance on my draft in favor of Mrs. Dugger or order, due 1st Jan., 1863	5,000.00	
Discount on this for the five days off	5.55	
		4,994 45
Cash paid her by me in full, believed in Confederate Treasury notes		2,970 11
Making am't of land note & interest		$11,230 06

Mrs. Dugger made no objection to the kind of money used in this payment, or any part of it, or to anything else that I remember; and she gave me in my said note with her receipt in full on the back of it, and on the 17th day of January after, I received payment of W. H. and H. A. Tayloe's second land note to me with interest till paid, in Confederate currency.

Statement showing the time, manner, and circumstances of
18 my payment of the third and last land note to Mrs. Dugger, due 19th Nov., 1863:

This year I did not go to Virginia, so being at home when the note fell due I called on Mrs. Dugger at her house on the day in company with Henry A. Tayloe to make payment. When our business was mentioned she says she was not willing to take Confederate money, or to that effect. Capt. H. A. Tayloe and herself had some conversation on the subject in which I took no part. I don't think I remember a single word used by either party, only the general tenor. She said but little, and his remarks were solely, I think, in the way of expostulation; nothing in the way of threats or pressure according to my recollection, and I don't remember that any other person was present. After a short time he and I left. According to my memory, in our talk as we rode on homewards, he referred to the then tax law of the Confederate States, which levied a tax on credits or money-claims in the hands of the holder, and provided that for the purpose of taxation such credits, as well as other things, should be assessed at their value in Confederate money, unless the holder would endorse in writing on the note his willingness to receive Confederate notes in payment. I think he asked me, in substance, if that law would not apply to the note we had just offered to pay
Mrs. Dugger, and that I answered I thought it would. We
19 soon parted near his house, and I went on home. I heard

nothing more on this subject from either of these parties or any other person, as I remember, till a week or so later, when I received through some one, not remembered, a message as from Mrs. Dugger that she was willing to accept Confederate States 8 per cent. bonds in payment of said note.

I suppose I saw Mr. Tayloe on the subject, and on the 30th of the same month, Nov., he and I again called together at Mrs. Dugger's house to see her on the subject.

I had at the time only a small amount of these 8 per cent. bonds. But the result of the meeting and conference was a settlement then made with Mrs. Dugger without any dissatisfaction or reluctance expressed on her part that I remember.

The settlement was as follows:

3d land note of W. P. Bocock & sureties to Mrs. A. G. Dugger, administratrix, &c., due 19th Nov., 1863		$11,906 64⅓
As the interest-coupon to 1st Jan., 1864, had been cut off the Confederate States bonds, so that these bonds only bore interest from & after 1st Jan., 1864, therefore interest was counted on the above land note to 1st Jan., 1864, viz:		108 46
Am't of land note & interest		12,015 10⅓

Paid as follows, on 30th Nov., 1863:

By H. A. Tayloe for W. P. Bocock to am't of Wm. H. & H. A. Tayloe's corresponding land note to said Bocock in Confed. States 8 per cent. bonds bearing interest from 1st Jan., 1864	$3,600 00	
In Confed. States treasury notes, suppose, being less than $100.00	79 10	
		3,679 10
By W. P. Bocock in Confed. States 8 per cent. bonds, int. from 1st Jan., 1864	$4,600 00	
In Confed. States treasury notes, supposed, being less than $100.00	36 00	
		4,636 00
By W. P. Bocock's written obligation "to pay & deliver to Mrs. A. G. Dugger, adm'x of Henry Dugger, deceased, thirty-seven hundred dollars ineight per cent. Confederate States bonds, bearing interest from 1st day of January, 1864; said bonds to be delivered on or before that date," (and delivered as hereafter shown)		3,700 00
Total am't, same as said land note & int.,		$12,015 10

Thereupon Mrs. Dugger gave me in my said last land note with her receipt in full as administratrix written on the back of it. No person, so far as I remember, was present on this occasion except Mrs. Dugger, H. A. Tayloe, & myself.

At the same time I gave up to H. A. Tayloe, W. H. & H. A. Tayloe's last land note to me discharged by his payment above.

Early in the following month, Dec., I borrowed seven thousand dollars of Confederate States 8 per cent. bonds, (to be returned in kind as was afterwards done) and with the help of these bonds, bearing interest from 1st day of January, 1864, I returned on or about the 29th of the month, Dec., to Henry A. Tayloe, three thousand dollars of said bonds which he had lent me to make the aforesaid payment of $4,600, in such bonds, to Mrs. Dugger on 30th Nov., 1863, and I also delivered the $3,700 of such bonds, as specified in my said obligation, to Mrs. A. G. Dugger, adm'x, &c., not to her in person, but to her son the plaintiff, W. W. Dugger, for her; he at the time holding my said obligation, which, on his receiving said bonds, he delivered up to me with a receipt for said bonds attached to it, on the same paper, signed by him as attorney
21 in these words: "Rec'd the above bonds for Mrs. A. G. Dugger, adm'x, &c., W. W. Dugger, att'y."

This receipt, as appears, has no date and I cannot, by memory or otherwise, fix the time of this transaction to my satisfaction.

My entry of it is hastily made under date of 10th May, 1864, and may have been made after the date of the transaction.

2nd Int.

To the second direct interrogatory he says: My answer to the first paragraph of this interrogatory is given as fully as I can give it in the statements of the several payments and the explanations contained in my answer to the first interrogatory.

Mrs. Dugger made no objections at all, so far as I remember, to the kind of money or funds offered and used in payment of the first and second land notes to her.

She objected to receiving Confederate money when it was offered her in payment of the 3rd note on the day that note fell due as already stated. I don't remember that she stated the ground of her objection. The consequences following this objection show the note was paid, and why so paid, are stated in my answer to first interrogatory.

I am sure no threats or pressure were used by me to induce Mrs. Dugger to receive payment of any of said land notes in Confederate treasury notes or bonds, and so far as my knowledge and memory enable me to speak, none were used by any other person. Of what may have been said or done by any one in my absence I
22 know nothing. I cannot recollect whether any, and if any, which of Mrs. Dugger's grown children were living with her at the time the last note was paid. Her son, Reuben H. Dugger, was a practicing physician. He was not the physician usually called on my place, but was occasionally employed. I see by accounts & receipts between him and me that he was in the neighborhood (and when so I think he lived with his mother) in May, July & August, 1863, to the last day of August. As to his presence or absence the latter part of the year, I have nothing to aid my memory.

And as to her son, W. W. Dugger, he is shown to have been with her not long after the end of 1863, for he held and collected my obligation, given her on 30th Nov., 1863, for the 3,700 dollars in

Confederate States 8 per cent bonds, as before stated, but where he was at the time of said payment, Nov. 30th, 1863, I have no recollection. I do not know whether she consulted with them or either of them as to receiving Confederate treasury notes or bonds.

To the third direct interrogatory he says: The said notes given by me and sureties for the purchase money of said lands were surrendered to me as the same were severally paid with a receipt endorsed on each of them. Each of said receipts was written on the said note by me in her presence after payment, read to her, and handed to her for her examination and signature. She signed her name as executrix thereto in my presence, & returned the note to me.

23 Said H. A. Tayloe was also present when the receipts were written and signed on the second and third notes, he was a subscribing witness to the third and last receipt.

The tenor and effect of each of said notes is stated, I believe, with sufficient correctness in the report of the sale of said lands made by Mrs. Dugger, as executrix, to the probate court of Marengo county, under whose order the sale was made. The following are true copies of the receipts endorsed on said notes when paid, as above:

On 1st note, $10,370.30⅓ payable on the 19th Nov., 1861.

"DEC. 31*st*, 1861.

"Rec'd of W. P. Bocock payment in full of this note, leaving the railroad right of way for after adjustment, paid in part by draft on B. L. & Co. for $5,000 at 6 months with interest from date, in part by sight draft on same for $2,574.92, & balance in cash.

"A. G. DUGGER, *Administratrix.*"

On 2nd note, $11,138.47⅓ payable on the 19th Nov., 1862.

"DEC. 26*th*, 1862.

"Rec'd of W. P. Bocock eleven thousand two hundred and thirty dollars and 6 cents in full of the within note, principal & interest to this date.

"A. G. DUGGER, *Administratrix.*"

On 3rd note, $11,906.64⅓ payable on the 19th Nov., 1863.

"Nov., 30, 1863.

"Rec'd of W. P. Bocock payment in full of this note which is the last installment for the land therein mentioned, the other two being before paid.

"A. G. DUGGER, *Administratrix.*"

"Test:

"HENRY A. TAYLOE."

24 To the 4th direct interrogatory he says: On or about the 21st March, 1868, having been advised by my legal counsel that if I would show to the satisfaction of the judge of probate of Marengo county, in whose court the proceedings for the sale of the said Dugger land were still pending, and my purchase notes executed, &c., had been reported and confirmed, that I had paid all

the purchase money for said land, and taken in my notes, &c., he would make an order, appointing some person to convey the title to me. I went to Linden, accompanied by said Henry A. Tayloe, taking my said three notes, receipted as before stated, filed my application for a deed, and gave in proof of payment such evidence as was satisfactory to the said judge, including the said notes & the receipts on them. Thereupon, the said court granted my application and appointed Henry A. Wolfe, Esq., to execute a conveyance to me of the right, title, and interest of said Henry Dugger, dec'd, in and to the said lands. All which will more fully and at large appear by the record and proceedings in said case in Marengo probate court.

On the same day, said Henry A. Wolfe executed, and acknowledged, and delivered to me a deed in conformity with the said order of said probate court. That deed is of record in Marengo probate court and also in Hale probate court. It is the deed to which, I suppose, the interrogatory refers; and I further suppose, that an official copy thereof will answer the desired purpose as well as any copy I could make for this deposition.

To the 5th direct interrogatory, he says: I have stated already all that I can remember, in respect to the matters referred to in the defendant's interrogatories, and cannot recall to memory anything else of the least importance, either way.

I have tried to refresh my memory, whenever practicable, by reference to private papers and entries, and think in what I have stated there is no error.

It may be added that the excitement of the war, and still more the occupancy of my time and thoughts with matters connected with the railroad, of which I was acting president, from early in August, 1863, to late in May, 1864, may have caused some remissness in the time of making my entries, &c., in some instances.

To the first cross-interrogatory he says: In my answer to the 4th direct interrogatory I have stated that I got a deed for the lands in question, made by order of the probate court of Marengo county, and upon my own application. I now further state, that I gave no notice of said application either to Mrs. Alice G. Dugger, administratrix of Henry Dugger, dec'd, or to any of the heirs of said Henry Dugger.

And the reason why I did not give such notice, was that my counsel, under whose advice I acted, did not advise me that such notice should be given; my said counsel was Wm. E. Clarke, esq'r, of Demopolis.

To the second cross-interrogatory he says: For a full answer to this interrogatory, I refer to my answer to the first direct interrogatory. And I have now only to add that some years ago, date not certainly remembered, but not earlier than 1873, in substantial compliance with my obligation to William H. Tayloe, of 23rd February, 1861, and being requested so to do, I executed a deed conveying such title as had been acquired by me to that portion of the Dugger land which went after the sale into possession of said Henry A. Tayloe & so continued unto the three children, heirs-at-

law, & resid*ee any* legatees of said Wm. H. Tayloe, who had before then died in Virginia. This deed was made at the instance of R. L. Maupin, then, I think, probate judge of Marengo, who seemed to be representing said children of Wm. H. Tayloe, dec'd, and was delivered to him; he delivering up to me my said obligation of 23rd Febr'y, 1861, to Wm. H. Tayloe, with a written endorsement thereon, by said Henry A. Tayloe, giving his consent and authority to me to execute said deedto the children of Wm. H. Tayloe. And further this deponent saith not.

WILLIS P. BOCOCK.

I, John H. Prince, commissioner named in the commission hereto attached and acting under and by virtue of said commission,
27 which issued from the circuit court held in and for Hale county, in the State of Alabama, in a certain suit pending in said court, wherein W. W. Dugger *et al.* are plaintiffs and H. A. Tayloe *et al.* are defendants, do hereby certify that I caused Willis P. Bocock, the witness named in said commission, who is personally known to *me*, to come before me at his residence, in Hale county, Ala., on the 21st day of July, 1879; that said witness was first duly sworn by me *to me* to speak the truth, the whole truth, and nothing but the truth; that he testified as it is hereinbefore set down; that the testimony of said witness was reduced to writing by himself; that the said witness subscribed his name to his own testimony in my presence; that I am not of counsel or kin to either of the parties to said cause, nor am I interested in the event thereof. In witness of which I have hereunto set my hand and seal this 21st day of July, 1879.

JOHN H. PRINCE, [SEAL.]
Commissioner.

Here the plaintiffs rested.

The defendant then introduced the bond of Alice G. Dugger, as administratrix of Henry Dugger, deceased. Objected to as irrelevant by plaintiffs, and objection overruled. To which plaintiffs, then and there by counsel excepted.

Bond of Administratrix.

Estate of Henry Dugger, Deceased.

THE STATE OF ALABAMA, *Marengo County*:

28 Know all men by these presents, That we, Alice G. Dugger, S. Watkins Vaughn, and Alice G. Vaughn, are held and firmly bound unto James A. Young, esq'r, judge of probate for the county of Marengo, and to his successors in office in the sum of one hundred thousand dollars, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 15th day of December, in the year one thousand eight hundred and fifty-six.

The condition of the above obligation is such that whereas the above-bound Alice G. Dugger has this day been duly appointed

administratrix *de bonis non* of the estate of Henry Dugger, late of Marengo county, deceased.

Now if the said Alice G. shall and do well and truly perform all the duties which are or may be by law required of her as such administrator, then the above obligation to be void, otherwise to remain in full force.

ALICE G. DUGGER. [L. S.]
S. WATKINS VAUGHN. [L. S.]
A. G. VAUGHN. [L. S.]

Signed, sealed, and acknowledged before me on the day and year above written, by S. W. Vaughn, Sr., R. H. Croswell.

The State of Alabama, Dallas county: by Alice G. Dugger & A. G. Vaughn.

Approved Dec. 15th, 1856.

J. W. WHEELER.
J. A. YOUNG.

The defendants then introduced in evidence the certified transcripts of the following orders & decrees, to which, by agreement of counsel for plaintiffs and defendants, the plaintiffs' objection as to the administration bond should be taken as separately made to each
29 piece of said testimony overruled by the court and exceptions reserved by the plaintiffs, to wit:

1*st. Petition to Sell Lands.*

STATE OF ALABAMA, *Marengo County:*

To the Hon. the probate court of said county:

The undersigned administratrix of Henry Dugger, dec'd, of said county, respectfully alleges that her intestate died seized and possessed of the following described lands, lying and being situate in said county, to wit, the north half and southwest quarter of section thirty-one, and the southeast quarter of section thirty, all in township eighteen, range four east; she further alleges that the following-named persons (they and they alone) are the heirs and distributees of said decedent, viz: Alice G. Dugger, (vendee of original distributee, H. B. Dugger), Alice G. Dugger, (administratrix of John W. Dugger, who died in New Orleans during the year 1854), Wm. Waverly Dugger, Reuben H. Dugger, Frederick E. Dugger, L. White, Alice V., and Hobart C. Dugger, the last three being still minors, of whom said Alice G. Dugger is guarddian; she further alleges that said estate is out of debt, and that a fair, beneficial, and equitable division of said lands among the said heirs and distributees cannot be made without a sale thereof; she therefore asks your honor to grant and make an order authorizing and empowering her to sell said lands for said purpose. All ofwhich is respectfully submitted.

A. G. DUGGER, *Adm'x.*

30 We concur in the above application.

REUBEN H. DUGGER.
F. E. DUGGER.

STATE OF ALABAMA, *Marengo County:*

Personally came before me Alice G. Dugger, Reuben H. and F. E. Dugger, who are known to me, and on oath say the allegations in foregoing application are true, and they signed the same voluntarily on Sept. third, 1860.

2nd. Order Setting Hearing of Petition.

Estate of Henry Dugger, Dec'd.

PROBATE COURT, *September 3rd*, 1860.

This day came Alice G. Dugger, administratrix of said estate, by attorney, and filed her petition in writing for a decree authorizing the sale of the real estate of which said Henry Dugger died seized & possessed, which real estate is described in said petition, for the purpose of making a division thereof. It is therefore ordered that said petition be set for hearing on the 3rd Monday of October next, and that citations issue to the heirs-at-law of said Henry Dugger, named in said petition; and it is further ordered that Robert D. Hart, esq'r., be appointed guardian *ad litem*, for the several minor heirs named in said petition, to deny the facts set forth therein and to represent them in this cause, unless they appear and make choice of a guardian to represent them.

JAS. A. YOUNG, *Judge.*

31 *3rd. Order to Sell.*

Estate of Henry Dugger, Dec'd.

PROBATE COURT, *October, 22nd*, 1860.

This day came on to be heard the petition of Alice G. Dugger, adm'x of said estate, for an order and decree authorizing her to sell the real estate of said deceased, described in said petition for the purpose of making a division among the distributees, and it appearing that all the facts set forth in said petition are fully sustained by the testimony of H. A. Tayloe and J. D. Browder taken and filed in this cause, and it further appearing that all the heirs of said intestate have had legal notice and are now here before the court, by R. D. Hart, esq'r., who appears in their behalf.

It is therefore ordered and decreed that said petition be granted, and that said real estate be sold at public auction in Demopolis, in said county, on a credit of one, two, and three years from date, payable in three annual installments with interest from the date of sale, and it is further ordered that said administratrix file her report of said sale at the January term of this court next.

4th. Report of Sale.

STATE OF ALABAMA, *Marengo County:*

To the honorable the probate court of said county:

The undersigned, administratrix of the estate of Henry Dugger, dec'd, of said county, respectfully reports unto your honor,

32 that in pursuance of an order of said court, bearing date of the October term, 1860, ordering the administratrix aforesaid to sell the land belonging to said estate, in said county, known as the plantation of Henry Dugger, dec'd, (which order is hereto appended) after legally advertising the same for sale by publication for three successive weeks in the Canebrake Gazette & Linden Jeffersonian, newspaper published in said county, and also by posting up many advertisements throughout this and adjoining counties, proceeded to sell said land on the premises, on the 19th day of November, 1860, between the hours of twelve o'clock m. and five o'clock, p. m., at public outcry, on a credit of one, two, and three years—that is to say in three equal installments bearing interest from date of sale—and that said land was struck off to Willis P. Bocock at the sum of ($28,806.40) twenty-eight thousand eight hundred and six dollars and forty cents, this being at the rate of forty-five dollars and one cent per acre for the tract of six hundred and forty acres. He being the highest and best bidder therefor said land was sold as a tract of six hundred and forty acres, more or less, it being expressly stated that if more the purchaser gained it, and if less he lost it, and was described by the numbers, to wit: the southeast quarter of section 30, and the north half and southwest quarter of section thirty-one; all in township 18, range 4 east. Said
33 administratrix, in order to secure the purchase money of said land thus sold, took the three separate promissory notes of said W. P. Bocock, with F. S. Lyon & H. W. Reese, of this county, as sureties thereon, including the interest in said separate notes, to wit: the first as follows: On the nineteenth day of November, 1861, we or either of us promise to pay Alice G. Dugger, adm'x of H. Dugger, dec'd, the sum of $10,370.30⅓ which is the amount that will be due on that day as first payment of the purchase money for six hundred and forty acres of land sold on the 19th day of November, 1860, and belonging to the estate of H. Dugger, dec'd, under an order of the probate court of Marengo Co., Ala., dated November 21st, 1860; the second note, same tenor & date, is made for $11,138.47⅓, due Nov. 19th, 1862; the third note, same tenor and date, is made for $11,906.64⅓, and due Nov. 19th, 1863; said administratrix having in all things pertaining to said sale pursued and conformed to the statute in such cases made and provided, and your said decretal order, asks your honor to approve and confirm said sale. All of which is respectfully submitted.

January 12th, 1861.

A. G. DUGGER, *Administratrix.*

STATE OF ALABAMA, *Marengo County:*

Before me, W. W. Dugger, an acting justice of the peace in and for said county, personally came Alice G. Dugger, whose name is signed to the foregoing report, and on oath acknowledges that she voluntarily subscribed the same, and says that said report is
34 a true and correct report of the said sale of lands of est. of Henry Dugger, dec'd, as sold by her as adm'x under the said order of court, January 12th, 1861.

W. W. DUGGER, *J. P.*

5th. Order on Confirmation of Sale.

Estate of Henry Dugger, dec'd.

This day came the administratrix of said estate, by attorney, and likewise came W. P. Bocock, by attorney, and upon hearing, it is ordered by the court that the caveat heretofore filed by said Bocock be dismissed, and it appearing that the sale of the real estate was fairly made after legal advertisement, and that the terms thereof have been fully complied with by the purchasers.

It is therefore ordered and decreed by the court [that] said sale be confirmed and that said report be recorded.

JAS. A. YOUNG, *Judge.*

The defendant then offered the certified transcript of the record of the final settlement of Alice G. Dugger, as administratrix of the estate of Henry Dugger, and the decree thereon, to which the plaintiffs objected, 1st, because the same was irrelevant to any issue in this cause, and 2nd, because said transcript of record shows on its face that said settlement and decree thereon was absolutely void, which objection, the court overruled, to which [ruling] plaintiffs, by their counsel, then and there duly excepted.

35 *Transcript of Sale & Settlement.*

F. E. Dugger in acc't with Alice G. Dugger.

1861.					
1. April	5.	To am't p'd P. W. Pearson, acc't due est. T. H. Walker		4 72	
		To int.		1 11	
2. June	6.	To cash		30 00	
		To int.		6 82	
1860.					
3. April	19.	To cash		40 00	
		To int.		12 62	
4. Nov.	14.	To exchange on New York sent by J. E. Saunders		149 25	
		To int.		40 55	
1861.					
Jan'y	10.	To exchange on New York sent by J. E. Saunders		99 75	
		To int.		26 87	
		To board from 1st July to Sept. 15th, '60, @ $10.00 per mo.		25 00	
		To int. from Jan. 1st, 1861		6 56	
					$443 25
		To board from 1st Feb. to 15th Oct., 1861, @ $10.00 per mo.		85 00	
		To int. from Jan'y 1st, 1862		15 50	
		To board of W. W. Dugger's horse from June 20th to Oct. 20th, 1861, @ $5.00 per month		20 00	

		To int. Jan'y 1st, '62	3 64	
Dec.	16.	To am't p'd S. N. Steele's acct., 1861, by order on W. P. Bocock	12 48	
		To int.	2 21	
	1860.			
Nov.	—.	To cash sent you at New York by letter	10 00	
		To int.	2 60	
				$150 93
	1862.			
Jan'y	3.	To cash	50 00	
		To int.	9 05	
	1863.			
April	10.	To cash	520 00	
		To int.	41 60	
Feb'y	5.	To cash	50 00	
		To int.	4 75	
	1864.			
Jan'y	23.	To am't p'd Obering (shoes)	50 00	
		To int.		
	1862.			
	Feb. 6.	To am't p'd I. Marx' acct.	12 38	
36		To int.	2 10	
	April 6.	To am't p'd acct. Duncan & Warrick	18 29	
		To int.	2 90	
	1863.			
Jan'y	22.	To am't cash, $110.00; to int., $10.71	120 71	
				$881 78
	1862.			
Feb.	—.	To board for 5 months ending April 1st, '64	125 00	
	1863.			
19. Feb.	8.	To Cornish's acct.	170 35	
		To int.	15 86	
20. Jan.	30.	To am't — Robertson Bros. acct. & note	11 10	
		To int.	1 04	
	1862.			
21. Oct.	17.	To am't p'd Obering's acct.	20 00	
		To int.	2 35	
22. Feb.	25.	To am't tax ('61, State & county)	2 00	
		To int.	33	
	1863.			
23. Feb.	26.	To am't tax ('62, State & county)	12 11	
		To int.	1 00	
				$351 14
	1862.			
24. Feb.	27.	To am't p'd Obering	18 40	
		To int.	3 05	

25.	Aug. 5.	To am't p'd Stubs acct.		5 00	
		To int.		70	
	1860.				
	d. April 9.	To am't p'd Judge Young, court cost, yrs. '59 '60		20 65	
		To int.		6 55	
	1858.				
26.	June 25.	To am't, court costs, p'd Judge Young, sett. '58.		12 80	
		To int.		5 85	
	1864.				
27.	Ap'l —.	To am't p'd per entries on acct. book	1,887 00		
		To int.		5 00	
					$1,965 00
		To am't due by decree of probate court		408 69	
		Int. on do.		130 56	
					529 25
		To am't court costs for this settlement		23 00	
		To printer's fee, ¼		2 00	
					25 00
					$4,356 35
		Com's on $4,356.35 & $496.02		----	121 30
		Att'y's fee		----	25 00
					$4,502 65
		Balance in favor of F. E. Dugger, car'd down		----	1,014 67
					$5,517 32

37 I admit the above acct. to be correct as stated.
F. E. DUGGER,
Per W. W. DUGGER, *Att'y.*

CREDITED.

By hire of servant, yr. '61	50 00		
By int.	9 11		
By hire of servant, yr. '62	350 00		
			$409 11
By int.	35 80		
By hire of servant, yr. '63	50 00		
By int.	1 11		
By am't per decree of court on settlement	5,021 30		
			5,108 21
			$5,517 32

ALICE G. DUGGER.

STATE OF ALABAMA, *Marengo County:*

Personally came Alice G. Dugger, adm'x, and on oath says the above acct. is correct as stated.

HENRY A. TAYLOE, *J. P.*

L. W. Dugger in acct. with Alice G. Dugger, guardian.

	1861.			
1.	March 6.	To am't acct. p'd S. N. Steele	$7 67	
		To int.	1 75	
2.	Feb. 6.	To am't p'd you for college expenses	230 00	
		To int.	58 46	
	1860.			
3.	Nov. 8.	To am't p'd you for college expenses	250 00	
		To int.	68 33	
4.	Dec. 23.	To am't p'd you for college expenses	5 00	
		To int.	1 32	
5.	Aug. 20.	To am't p'd you for pocket money	5 00	
		To int.	1 45	
6.	Sept. 7.	To am't p'd you	22 50	
		To int.	6 30	
7.	Oct. 14.	To am't p'd you [for] college expenses	25 00	
		To int.	6 96	
38	1861.			
8.	July 26.	To am't p'd you [for] college expenses	30 00	
		To int.	6 50	
9.	M'ch 30.	To am't p'd J. F. Knight (dentist)	8 66	
		To int.	1 82	
				$736 72
10.	April 5.	To am't p'd acct. T. H. Walker	5 00	
		To int.	1 20	
		To board from 15th July to 1st Oct., 1860, at $10.00 per month	25 00	
		To int. from Jan. 1st, 1861	6 56	
11.	Dec. 16.	To am't p'd S. N. Steele by order on W. P. Bocock	8 89	
		To int.	1 40	
		To cash sent you to Va.	5 00	
		To int.	1 93	
	1862.			
	Jan'y 3.	To cash sent Dr. Vaughn to pay money borrowed from him for you	50 00	
		To int.	9 08	
	1862.			

Jan. 9.	To cash		300 00	
	To int.		54 00	
1863.				
Feb'y 1.	To cash		250 00	
	To int.		23 88	
Mar. 18.	To cash		500 00	
	To int.		42 50	
May 19.	To cash		400 00	
	To int.		28 43	
1864.				$1,711 87
Jan'y 19.	To cash p'd R. H. D., for horse Maggie		750 00	
	To int.		13 33	
1863.				
July 23.	To cash		100 00	
	To int.		5 73	
Feb'y 26.	To am't p'd I. Marx' acct.		2 40	
	To int.		35	
1863.				
18. Jan'y 30.	To am't p'd Robertson Bros.' acct.		15 08	
	To int.		1 43	
19. Feb'y 8.	To Cornish's acct.		59 06	
	To int.		5 55	
39 1862.				1,452 93
20. Aug. 5.	To am't p'd Steele's acct.		15 35	
	To int.		2 00	
21. Oct. 17.	To am't — Obering's acct.		20 00	
	To int.		2 30	
1863.				
22. Feb. 26.	To am't p'd tax '61, State & county		11 56	
	To int.		1 05	
23. Feb. 27.	To am't p'd Obering's acct.		41 02	
	To int.		6 56	
24. Jan. 30.	To am't p'd Robertson Bros'. acct.		12 76	
	To int.		2 10	
1860.				
d. Ap'l 9.	To am't p'd Judge Young's court cost for y'rs '59–'60		20 65	
	To int.		6 40	
1858.				
25. June 25.	To am't court cost p'd Judge Young settlement '58		11 00	
	To int.		5 06	
1864.				
26. April —.	To am't advanced or p'd as per entries on acct. book, y'rs 1862 & 1863	1,607 00		
	To cash, rent, by Lewis, Dec. 31st, '63	150 00		
1863.				
27. Nov. 2.	To cash advanced		32 00	

	To int.	1 10	
			1,907 91
	Am't p'd out carried down		$5,849 43

I admit the above acct. to be correct as stated.
L. W. DUGGER,
Per. W. W. DUGGER, *Att'y.*

	Amounts paid out brought down		$5,849 43
	" due guardian on sett. of 1860, as per decree of court	141 31	
	Int. on do. to April 11th, '64	45 12	
	Court costs	23 00	
	Printer's fee, ¼	2 00	
	Com's on $972.18 & $5,849.43	170 40	
	Att'y's fee	25 00	
			$6,256 26

40 CR.

	By hire of slaves, 1861	385 00	
	" " " " 1862	252 00	
	" " " " 1863	235 00	
	" int. on do. to April 11th, '64	101 18	
	Am't of decree on final settlement of est. of H. Dugger, rendered this day	5,021 30	
1864. April 11.	Bal. in favor of guardian	261 78	
			$6,256 26

ALICE G. DUGGER.

STATE OF ALA., *Marengo Co.:*

Personally came Alice G. Dugger, & on oath says the above acct. is correct as stated.

HENRY A. TAYLOE.

W. W. Dugger in acct. With Alice G. Dugger.

1860. June 8.	To am't p'd by draft on J. E. Saunders for horse	160 00	
	To int.	49 16	
Sept. 13.	To am't p'd by J. E. Saunders on your draft	50 00	
	To int.	14 25	
	To board from April 15th, 1860, to June 20th, '61, at $10.00 per month	141 67	
	To int. from Jan'y 1st, 1862	25 82	
			440 90

		To board of horse from March 20th, '60, to June 20th, '61, at $5.00 per month	75 00		
		To int. from Jan'y 1st, 1862	16 85		
		To board of horse from Oct. 20th, '61, to Jan. 1st, '62	11 67		
		To int.	2 00		
	1861.				
a.	Dec. 16.	To am't p'd S. N. Steele's acct., 1861, by order on W. P. Bocock	10 45		
		To int.	1 85		
	1860.				
	Sept. —.	To cash	20 00		
		To int.	5 72		
	1862.				143 54
8.	Feb'y 2.	To am't p'd int. to date on bond to Mrs. A. G. Vaughan for $1,000	80 00		
41		To int.	13 64		
	1864.				
19.	Jan'y 4.	To am't p'd prin. & int. as above	1,160 00		
		To int. p'd note in full	23 20		
	1862.				
20.	Feb'y 26.	To am't p'd acct. of I. Marx	11 50		
		To int.	17 00		
	1863.				
21.	Sept. 6.	To am't p'd for cloth for shirting, 19 y'ds, at $2.10 per yard	21 00		
		To int.	1 00		
	1863.				1,310 51
10.	Jan. 30.	To Robertson Bros.' acct	57 27		
		To int.	3 60		
11.	Feb. 8.	To Cornish's acct.	154 49		
		To int.	14 51		
	1862.				
12.	Aug. 5.	To am't p'd Steele's acct.	13 12		
		To int.	1 75		
	1863.				
13.	Feb. 26.	To am't tax ('62, State & county)	7 90		
		To int.	70		
	1862.				250 34
14.	Feb. 25.	To am't tax ('61, State & county)	94		
		To int.	15		
15.	Feb. 27.	To am't p'd Obering	19 16		
		To int.	3 20		
16.	Feb. 1.	To am't p'd Robertson Bros.' acct.	46 78		
		To int.	8 14		
17.	April 7.	To am't p'd Duncan, Kidd & Co.	17 50		
		To int.	2 80		
					98 67

1864.				
18. April—.	To am't p'd or advanced as per entries on acct. book for years 1862 & '63	490 00		
19. Feb. 22.	To am't advanced at Mobile	1,200 00		
	To int.	23 06		
	To board of horse for 28 months, 1st Jan'y, '62, to 1st March, 1864	140 00		
M'ch 11.	To cash received at Mobile	5 01		
	To am't due adm'x by decree of probate court $245.26; int. on $245.26, $78.40	323 66		
			2,181	72
			$4,428	78
42	Balance in favor of W. W. Dugger car'd down		$1,915	77
			$6,344	55

I admit the above acct. to be correct as stated.

W. W. DUGGER.

CR.

1863.				
Sept. 3.	Received payment Dr. Ligon's note	324 00		
	To int.	15 12		
Jan'y 1.	To bay horse sold Seldon's battery	225 00		
	To int.	23 05		
June 1.	To note by Kornegay for mule	100 00		
	To int.	6 90		
Jan'y 19.	To Pearson's note (Gabe & Shack, '61)	190 00		
	To int.	18 57		
"	To W. Dubose's note & int.	290 00		
	To int.	28 37		
1864.				
Jan'y 1.	To hire of servant Jincey, y'r '63	100 00		
	To int.	2 24		
			$1,323	25
	Am't as per decree of probate court on final sett. of est. of Henry Dugger, rendered this day		$5,021	30
			$6,344	55
	Balance in favor of W. W. Dugger brought down		$1,915	77
	Deduct costs for stating acct. recording		9	00
			$1,906	77

ALICE G. DUGGER.

STATE OF ALABAMA, *Marengo Co.:*

Personally came Alice G. Dugger, and on oath says the above is correct as stated.

HENRY A. TAYLOE, *J. P.*

R. H. Dugger in acct. with Alice G. Dugger.

	1861.			
1. May	2.	To cash	6 00	
		Int.	1 41	
2. Jan'y	14.	To am't p'd A. J. Crawford, taxes, 1860	2 67	
43		To int.	58	
		To board from April 15th, 1860, to Jan. 1st, 1862, at $10.00 per month	205 00	
		To int.	37 35	
				$253 01
		To board of horse from March 20th, 1860, to Jan. 1st, '62, at $5.00 per month	106 67	
		To int.	19 40	
	1861.			
5. Dec.	16.	To am't p'd S. N. Steele, your acct. 1860, by order on W. P. Bocock	34 29	
		To int.	6 20	
	1862.			
7. Jan.	9.	To am't advanced you on acct. of your dis. share of est.	600 00	
		To int.	108 00	
				936 45
	1860.			
8. Nov.	21.	To cash	35 00	
		To int.	6 68	
	1863.			
9. Aug.	15.	To cash	80 00	
		To int.	4 17	
10. April	20.	To cash	1,060 00	
		To int.	82 67	
11. June	16.	To cash	100 00	
		To int.	6 55	
	1862.			
12. Feb.	26.	To am't p'd J. Marx' acct.	16 60	
		To int.	2 81	
13. Nov.	4.	To am't p'd J. Marx' note, $13.48; int., $1.50	14 98	
		To int.	1 70	
14. Feb.	27.	To am't p'd Obering	10 20	
		To int.	70	

	1860.			
d.	April 9.	To am't p'd Judge Young, court costs, yr. '59	8 50	
		To int.	2 70	
	1858.			
15.	June 25.	To am't p'd Judge Young, settl., year '58	11 00	
		To int.	5 00	
	1864.			
16.	Feb. 24.	To cash	200 00	
		To int.	1 95	
44		To board 36 months of horse--- " 6 " ---"	210 00	
		To board of self, 12 months, to April 1st, 1864, at $20.00	240 00	
		To am't due by decree of probate court	1,274 19	
				$1,974 04
				$4,586 50
		C't costs		9 00
				$4,595 50
		Bal. due R. H. Dugger		425 80
				$5,021 30

I admit the above acct. to be correct as stated.

R. H. DUGGER.

CREDITED.

		By am't of decree of court on final settlement of H. Dugger's est. this day		$5,021 30
	1864.			
	April 11.	Am't due from Mrs. Dugger, adm'x, to R. H. Dugger, brought down-	425 80	

ALICE G. DUGGER.

STATE OF ALABAMA, *Marengo County:*

Personally came Alice G. Dugger, and on oath says the above acct. is correct as stated.

HENRY A. TAYLOE, *J. P.*

Final Settlement of Guardianship.

Probate Court. April Term, 1864.

Estate of WAVERLY W. DUGGER, REUBEN H. DUGGER, FREDERICK E. DUGGER, & LUKE W. DUGGER.

STATE OF ALABAMA, *Marengo County:*

This day came Mrs. Alice G. Dugger, late guardian of said Waverly W. Dugger, Reuben H. Dugger, Frederick E. Dug-
45 ger, & Luke W. Dugger, by her attorney, and also came said Waverly W. Dugger; and it appearing that said Waverly W., Reuben H., Frederick E., and Luke W. Dugger have severally attained the age of twenty-one years, the final settlement of the accounts of said Alice G., as guardian aforesaid, comes on this day to be heard; and it further appearing that notice of said settlements has been given by publication for three successive weeks in the Linden Jeffersonian newspaper, the said accounts and vouchers are now here audited and stated, from which it appears that, after charging said guardian with all wherewith she is justly chargeable and allowing her all proper credits, there remains a balance of nineteen hundred & six $\frac{77}{100}$ dollars in favor of said Waverly W. Dugger; that there remains a balance of four hundred and twenty-five $\frac{80}{100}$ dollars in favor of said Reuben H. Dugger; that there remains a balance of one thousand & fourteen $\frac{67}{100}$ dollars in favor of Frederick E. Dugger; and that there remains a balance of two hundred and seventy-one $\frac{78}{100}$ dollars against said Luke W. Dugger in favor of said Alice G. Dugger as guardian aforesaid.

It is therefore adjudged, ordered, & decreed by the court that said accounts, as stated as aforesaid, be passed and allowed, and recorded as a final settlement of said Alice G. Dugger's guardianship of said Waverly W. Dugger, Reuben H. Dugger, Frederick E. Dugger, & Luke W. Dugger; and it is further ordered and decreed that said Alice G. Dugger pay to said Waverly W. Dugger said balance of nineteen hundred & six $\frac{77}{100}$ dollars; that
46 she also pay to said Reuben H. Dugger said balance of four hundred & twenty-five $\frac{80}{100}$ dollars, and that she pay to said Frederick E. Dugger said balance of one thousand & fourteen $\frac{67}{100}$ dollars, for which sums executions may issue; and it is further ordered & decreed that said Alice G. be discharged from further accounting as guardian of said Luke W. Dugger.

JAMES A. YOUNG, *Judge, &c.*

THE STATE OF ALABAMA, *Marengo County:*

I, James W. Tayloe, judge of probate in and for said county, hereby certify that the foregoing accounts and decree therein are truly and correctly copied from the original accounts on file in said probate court, and from the decree on record and on file in said court.

Given under my hand, at office in Linden, this the 2nd day of April, 1879.

JAS. W. TAYLOE,
Judge of Probate, Marengo Co.

To all of which the foregoing objections and exceptions apply.

The defendant then introduced Henry A. Tayloe, the defendant, who testified as follows:

Evidence of H. A. Tayloe.

I purchased the 196 acres sued for in this action, under the arrangement spoken of by Gen'l Bocock in his deposition, tho' I think it was a verbal arrangement and agreement, not a written one as he states. I took it at the same price it was bid off to him at. After making that arrangement, I attended the sale and bid off the land, in the name of General Willis P. Bocock. The Dugger estate reserved the land from the 19th of November, 1860, the date of sale, to get off the crops of that year, and by the first of Jan-
47 uary following, General Bocock and myself got each possession of the parts each was to take under our arrangements. General Bocock and myself got possession at the same time, and in the same manner, of the respective portions.

I never had any possession of his part, nor he of mine. He, Bocock, made his notes with security to the Dugger estate, and I, on the 23rd Feb'y, 1861, made mine with W. H. Tayloe, to him at the same rate per acre ($45.01), payable at the same time his notes were due. I paid my notes to him in Confederate money, except the last, when I went with him to Mrs. Dugger's, and paid the amount of my last note to him in 8 per cent. Confederate States bonds, which were then delivered to Mrs. Dugger, and also lent him some bonds to pay on his note for his land. Witness stated that there had been several suits against him by these parties for the land, all of which he had defended, claiming that the land was his.

H. A. Tayloe also testified that he had been in possession of the lands sued for continuously since he went into possession, on or about 1st Jan'y, 1861, cultivating them, holding and claiming to hold them all the time, in the right of his wife & her children, & claiming that he had paid for them, & denying any right in anybody else to them; that he had been defending suits brought by pl'ff- to recover the land ever since 1866.

The first suit against him was begun in 1866, and disposed of by the supreme court at the —— term, 18—, then a bill in
48 chancery in Hale county, in which the lands then belonged, filed on the — day of ——, A. D. 1873, which had been decided in his favor, and the decree affirmed by the supreme court on the — day of ——, 187–, and then the present suit had been begun. Witness further stated that he held the land now just as he had since he first obtained possession; that after Gen'l Bocock got back from Virginia, in 1860, and he had made notes to him, as spoken of, Bocock gave him a bond for title and subsequently executed a deed, as he states in his deposition.

Evidence of W. W. Dugger.

W. W. Dugger, then sworn for the defendant, testified that S. Watkins Vaughn, one of [the] sureties on bond of Alice G. Dugger, died

leaving a large estate, but at the time the bill in chancery was filed he was involved in some pecuniary complications, which it was then thought rendered him insolvent, but that his estate was perfectly solvent.

Here the defendant closed.

The foregoing was in substance all the evidence in this cause. And thereupon, after argument of counsel, the court charged the jury, at the request of the defendant in writing, as follows: "If the jury believe the evidence they must find for the defendant" by writing "Given—John Moore, judge," across the face thereof; to the giving of which plaintiffs then and there, by their counsel, duly excepted.

The plaintiffs, by their counsel, then asked the court in writing to charge the jury as follows:

Charges to Jury.

"If the jury believe from the evidence that at the sale of
49 the lands of the estate of Henry Dugger, deceased, which were bid off by or for Willis P. Bocock, the defendant in the case, was, by agreement with said Bocock, jointly interested with him in the purchase of said lands to the extent of the lands the possession of which he subsequently received at the same time that Bocock entered into possession of the other portion of said lands, participating in said purchase and continuing the possession so received, paying either to Bocock or Mrs. Dugger that proportion of the purchase-money which that part of the land in his possession bore to the entire tract, then said Tayloe is an original purchaser from said estate of the said portion of said lands of which he received possession, and which is sued for in this action, and as to the payment of the entire purchase-money for such lands stands in the same position to the heirs of said Henry Dugger as Bocock did as to the lands of which he received possession, and, if the entire purchase-money for said lands has not been paid, is a mere tenant at will, and his possession is not adverse to the title of said heirs, and the statute of ten years does not bar the plaintiffs' recovery in this case, and your verdict must be for the plaintiffs;" which charge the court refused to give by writing "Refused—John Moore, judge;" and to which refusal the plaintiffs then and there duly excepted.

No. 2. The plaintiffs then asked the court in writing to charge the jury—

"That bonds of the Government of the late Confederate States do
50 not constitute a good and lawful payment of the purchase money of lands belonging to the heirs of a decedent sold prior to the late war for division among said heirs; and if you find from the evidence that Tayloe was an original and joint purchaser with Bocock of said lands from said estate, and that the last note for said purchase-money was paid entirely and only in bonds of said Confederate States, then the entire purchase-money for said lands

has not been paid, the said Tayloe cannot avail himself of the plea of adverse possession, and your verdict must be for the plaintiffs;" which charge the court refused to give by writing "Refused—John Moore, judge," across the face thereof; to which refusal the plaintiffs, by their counsel, then and there duly excepted.

The plaintiffs then asked the court in writing to charge the jury—

Charge No. 3. "That if the contract of the sale for this land in controversy antedated the war, and was under a judicial sale, then the payment during the war of the purchase-money, or a material portion thereof, to the administratrix, Alice G. Dugger, in Confederate bonds, in 1863 or 1864, was not a compliance with the terms of the contract, and impaired the obligation of the contract of sale, and is obnoxious to the Constitution of the United States, as contained in section 10, article 1 thereof;" which charge the court refused to give by writing "Refused—John Moore, judge," across the face thereof; to which refusal the plaintiffs then and there, by their counsel, duly excepted.

51 The plaintiffs then asked the court in writing to charge the jury—

Charge No. 4. "That if Mrs. Dugger, as administratrix of Henry Dugger's estate, received under the circumstances proved in this case the purchase-money for the lands in controversy in Confederate treasury notes and Confederate bonds, and the lands were sold before the war, at a judicial sale, for division among the heirs of said estate, then the entire purchase-money has not been paid, and to uphold or judicially enforce such payment would impair the obligation of the contract and be violative of the Constitution of the United States;" which charge the court refused to give by writing "Refused—John Moore, judge," across the face thereof; to which refusal the plaintiffs by their counsel, then & there, duly excepted.

The plaintiffs then asked the court in writing to charge the jury—

Charge No 5. "That if the lands in controversy were sold for division among the heirs at a judicial sale, in November, 1860, on a credit of one, two, and three years, and paid for partly in Confederate 8 per cent. bonds in 1863, to the administratrix by Tayloe, or by Tayloe and Bocock, both being cognizant of the terms of sale, then the entire purchase-money has never been adequately and legally paid, and such payment leaves the defendant in possession as a tenant at will, and to deny the right of possession sued for in this action would be a denial of justice and obnoxious to the Constitution of the United States;" which charge the court refused

52 to give by writing "Refused—John Moore, judge," across the face thereof; to which refusal the plaintiffs by their counsel, then and there, duly excepted.

The plaintiffs then asked the court in writing to charge the jury that—

Charge No. 6. "If the jury believe the evidence they must find for the plaintiffs;" which charge the court refused to give by writing "Refused—John Moore, judge," across the face thereof; to which refusal the plaintiffs, by their counsel, then and there duly excepted.

And now come the plaintiffs, by Thomas R. Roulhac, their attorney, and tender this their bill of exceptions, and pray that the same may be allowed; which is accordingly done, and signed and sealed by the presiding judge of said court, in term time, on this the 17th day of October, A. D. 1881.

JOHN MOORE, [SEAL]
Judge 4[th] Circuit, Presiding.

Notice and Citation to Defendant.

THE STATE OF ALABAMA, *County of Hale:*

To any sheriff of the State of Alabama:

You are hereby commanded to notify Henry A. Tayloe *et al.*, or his attorney- of record, Messrs. Webb & Tutwiler, or either of them, that Hobart C. Dugger *et al.* has applied for and obtained an appeal
53 from the circuit court of the county aforesaid to the December (1881) term of the supreme court of the State of Alabama, in a cause wherein the said Henry A. Tayloe *et al.* recovered a judgment for costs of suit against the said Hobart C. Dugger *et al.*, on the 14th day of October, 1881, and cite the said Henry A. Tayloe *et al.*, or their attorney of record aforesaid, to be and appear at the December term of said supreme court, at the place of holding the same, on Tuesday, the 3rd day of January, 1882.

Herein fail not, and make due return of this citation to the December term of the supreme court of the State of Alabama.

Witness my hand this the 7th day of December, A. D. 1881.

V. BOARDMAN, *Clerk.*

Executed by handing copy to J. E. Webb, pl'ffs' att'y, December 7th, 1881.

J. W. LOCHE, *Sheriff,*
By DOUGLAS, *D. S.*

Returned in office this 7th Dec'r, 1881.

V. BOARDMAN, *Clerk.*

Certificate.

STATE OF ALABAMA, *Hale County:*

I, Volney Boardman, clerk of the circuit court in and for the county of Hale, and State of Alabama, do hereby certify that the foregoing pages from one to sixty-four inclusive contain a full and complete transcript of the original papers and record of proceedings had in a certain cause in said circuit court, wherein Hobart C. Dugger *et al.* being plaintiffs and Henry A. Tayloe *et al.*, defendants,
54 a judgment was rendered in said suit on the 13th day of October, 1881, in favor of Henry A. Tayloe *et al.*, defendants, for the sum of — dollars and costs of suit. I further certify that on the 21st day of October, 1881, said plaintiffs, by their attorney, filed a bond for and obtained an appeal from said judgment to the supreme court of the State of Alabama, and that H. C. Dugger,

Alice V. Sprague, W. W. Dugger, and A. G. Dugger are sureties on said appeal bond for damages and costs of appeal.

I do further certify that a notice of appeal & citation was issued to Messrs. Webb & Tutwiler, defendants' att'y- of record, to be and appear at the December term of said supreme court on the first Tuesday in January, 1882, it being the 3rd day of January, 1882, a copy of which is hereto attached, with the returns endorsed thereon, and made part of this record.

Given under my hand & seal of office, at office, this 13th day of Dec'r, A. D. 1881.

[SEAL.] V. BOARDMAN, *Clerk.*

And now come the appellants, by their attorney, and say there is manifest error in the record, in this—

1st. In overruling plaintiffs' objection to the admission of the administration bond of Mrs. Alice G. Dugger on behalf of the defendants, found on page 34 of the record.

55 2nd. In overruling plaintiffs' objection to the admission on behalf of defendants of the petition to sell lands of the estate of Henry Dugger, of the order to sell, of the report of sale, and order of confirmation of sale, found on pages 36–42 of the record.

3rd. In overruling plaintiffs' objection to the admission on behalf of defendants of the account and decree on final settlement of the guardianship of plaintiffs, on page 46 of the record.

4th. In giving the charges asked in writing by the defendants.

5th. In refusing the charges asked in writing by the plaintiffs.

THOMAS R. ROULHAC,
Attorney for Appellants.

6th. The court erred in overruling the objection of the pl'ffs to the introduction in evidence of the final settlement of the adm'x of Henry Dugger and decree thereon, on page 43 of the record.

THOS. R. ROULHAC,
Att'y for Appellants.

6th div., 483. Filed Jan. 11th, 1882.

JOHN W. SANFORD, *Clerk.*

Supreme Court.

WEDNESDAY, *Jan.* 11*th*, 1882.

The court met pursuant to adjournment.

Present: All the justices.

56 Hale Circuit Court, 6th Division.

HOBART C. DUGGER *et al.*
vs.
HENRY A. TAYLOE. } 485.

Come the parties, by attorneys, and argue and submit this cause for decision.

Supreme Court.

FRIDAY, *July 28th*, 1882.

The court met pursuant to adjournment.
Present: All the justices.

Hale Circuit Court, 6th Div.

HOBART C. DUGGER *et al.*
vs.
HENRY A. TAYLOE. } 485.

Come the parties, by attorneys, and the record and matters therein assigned for errors being argued and submitted and duly examined and understood by the court, it is considered that in the record and proceedings of said circuit court there is no error; it is therefore considered that the judgment of said court be in all things affirmed; it is also considered that the appellants and W. W. Dugger and A. G. Dugger, sureties on the appeal bond, pay the costs of appeal in this court and in the circuit court.

Per curiam:

Affirmed on authority of Tayloe *vs.* Dugger. M. S. S.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the
57 judges of the supreme court of the State of Alabama, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Alabama before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Hobart C. Dugger and Alice G. Sprague, plaintiffs in error, and Henry A. Tayloe, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Hobart C. Dugger and Alice G. Sprague, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if

58 judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 30th day of June, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.] J. W. DIMMICK,
Clerk of the Circuit Court of the United States
for the Middle District of Alabama.

Allowed by—
R. C. BRICKELL,
Chief Justice Supreme Court of Alabama.

Filed July 3rd, 1883.
J. W. A. SANFORD, *Clerk.*

59 Know all men by these presents that we, Hobart C. Dugger and Alice G. Sprague, as principals, and Reuben H. Dugger, William W. Dugger, Alice G. Dugger, and F. L. Foscoe, as sureties, are held and firmly bound unto Henry A. Tayloe in the full and just sum of two hundred and fifty dollars, to be paid to the said Henry A. Tayloe, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this second day of July, in the year of our Lord one thousand eight hundred and eighty-three.

Whereas lately at a term of the supreme court of the State of Alabama in a suit depending in said court between Hobart C. Dugger and Alice G. Sprague, plaintiffs, and Henry A. Tayloe, defendant, judgment was rendered against the said Hobart C. Dugger and Alice G. Sprague, and the said Hobart C. Dugger and Alice G. Sprague having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Henry A. Tayloe, or to James E. Webb and James T. Jones, his attorneys of record, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington [on] the second Monday of October next:

60 Now the condition of the above obligation is such that if the said Hobart C. Dugger, and Alice G. Sprague shall prosecute their writ of error to effect, or, upon affirmance of the said judgment or decree, pay all such costs as may be adjudged or decreed to

the respondent in error, then the above obligation to be void, else to remain in full force and virtue.

H. C. DUGGER. [SEAL.]
R. H. DUGGER. [SEAL.]
W. W. DUGGER. [SEAL.]
A. G. DUGGER. [SEAL.]
F. L. FOSCOE. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Approved by—

R. C. BRICKELL,
Chief Justice Supreme Court of Alabama.

Filed Aug. 20th, 1883.

SANFORD, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To Henry A. Tayloe or to James E. Webb and James T. Jones, his attorneys of record, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Alabama, wherein Hobart C. Dugger, and Alice G. Sprague are plaintiffs in error and
61 you are defendant in error, to show cause, if any there be, why a decree rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Robert C. Brickell, chief justice of the supreme court of Alabama, this the 2nd day of July, in the year of our Lord one thousand eight hundred and eighty-three.

R. C. BRICKELL,
C. J. Supreme Court of Ala.

THE STATE OF ALABAMA, *Hale County:*

I hereby certify that I have this day executed the foregoing citation by personal service on James E. Webb, Esqr., one of the attorneys of record in said cause for Henry A. Tayloe, and by leaving a copy thereof with him.

As witness my hand this 10th day of August, A. D. 1883.

J. W. LOCHE,
Sheriff, Hale Co., Ala.

Sheriff's fees, $1.30.

THE STATE OF ALABAMA, *Montgomery County:*

I, John W. A. Sanford, clerk of the supreme court of the State of Alabama, do hereby certify that the foregoing pages, numbered from 1 to 61 inclusive, contain a full, true, complete, and perfect

62 transcript of the record and proceedings of the said supreme court in the cause lately pending in said court, wherein Hobart C. Dugger *et al.* were appellants and Henry A. Tayloe was appellee; and that the writ of error hereunto attached is the original writ issued, allowed, and filed in the office of the clerk of said supreme court, and that the citation hereto attached was issued, and return of said citation was filed, in the office of said clerk of the said supreme court.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme court of the State of Alabama, at the city of Montgomery, in the said State, on the 5th day of October, A. D. eighteen hundred and eighty-three.

[Seal of the Supreme Court of Alabama.]

[$2 revenue stamp.]

JOHN W. A. SANFORD,
Clerk of Supreme Court of the State of Alabama.

Endorsed on cover: Alabama supreme court. No. 208. Hobart C. Dugger, and Alice G. Sprague plaintiffs in error, *vs.* Henry A. Tayloe. Filed 10th November, 1883.

121-286

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 470.

HOBART C. DUGGER AND ALICE V. SPRAGUE,
PLAINTIFFS IN ERROR,

vs.

HENRY A. TAYLOE, DEFENDANT IN ERROR.

Writ of Error to the Supreme Court of Alabama.

BRIEF OF J. T. JONES, COUNSEL FOR APPELLEE.

JAMES T. JONES,
For Defendant in Error.

JUDD & DETWEILER, PRINTERS.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 470.

HOBART C. DUGGER AND ALICE V. SPRAGUE,
PLAINTIFFS IN ERROR,

vs.

HENRY A. TAYLOE, DEFENDANT IN ERROR.

Writ of Error to the Supreme Court of Alabama.

BRIEF OF J. T. JONES, COUNSEL FOR APPELLEE.

STATEMENT.

This action was brought by Hobart C. Dugger and Mrs. Alice V. Sprague against Henry A. Tayloe in the circuit court of Hale County, Alabama, to recover the possession of a tract of land particularly described, containing 196 acres, with damages for its detention, and was commenced on the 27th of May, 1881. The defendant pleaded not guilty and

the statute of limitations of ten years, and issue was joined on both of these pleas. The plaintiffs were two of the children of Henry Dugger, deceased, to whom the land had belonged at the time of his death, in 1852, and the plaintiffs claimed an undivided interest in the land as his heirs, he having died intestate. The defendant was in possession as trustee for his wife and children under a conveyance from Willis P. Bocock and wife, and it was proved that he went into possession under said conveyance and purchase from Bocock about January 1, 1861, and has been continuously in possession ever since, claiming the same as the property of his wife and children, occupying and cultivating it. The said land, with other adjoining lands, was sold by Mrs. Alice G. Dugger, as administratrix of the estate of said Henry Dugger, under an order of the probate court of Marengo County on November 21, 1860, for division among the heirs. At this sale the said Bocock became the purchaser, and was so reported to the court, and the sale was confirmed. On the 21st of March, 1868, on the petition of said Bocock, alleging that he had paid the purchase-money, an order was made by said court directing a conveyance to be made to him by a commissioner appointed for that purpose, and a conveyance was executed to him accordingly. On the 31st of October, 1873, the plaintiffs in this suit filed their Bill in Equity in the Hale County Chancery court against said Tayloe, Bocock, and others, seeking to set aside this probate decree, and to enforce a vendor's lien on the land for the purchase-money, which was alleged to be due and unpaid by Bocock, and on appeal by the complainants in that case the supreme court of Alabama held, at its December term, 1877, that the bill was without equity, as the complainants had a legal title and an adequate remedy at law. (*Vide* Dugger *vs.* Tayloe, 60 Ala. Reports, 504.) This case was taken to the Supreme Court of the United States on a writ of error, and the writ of error was dismissed because no Federal question was involved. Afterwards, on May 27, 1878, an action in the na-

ture of an action of ejectment was commenced by the same parties. On the trial it was proved that Mrs. Alice V. Sprague, one of the plaintiffs, was born on July 21, 1847, and that Hobart C. Dugger, her coplaintiff, was born on August 13, 1849. It also was proved that the first payment of the purchase-money was made in Confederate Treasury notes, which were received by Mrs. Dugger, the administratrix, without objection. The second payment was made partly in Confederate Treasury notes and partly in bonds issued by the Confederate States. The third and last payment was made in Confederate bonds. In the spring of 1864 Mrs. Dugger made a settlement of her administration, and debited herself and was charged with the full amount of said purchase-money. Decrees were rendered against her accordingly. On the trial of this case the court charged the jury, on the request of the plaintiffs, "that they must find for the plaintiffs if they believed the evidence;" but on appeal to the supreme court of Alabama this ruling was reversed and the case remanded. A report of this case will be found in 66th Ala. Reports, page 444.

Afterwards, on the — day of ——, the present action was brought by the same plaintiffs against the defendant, was decided in favor of the latter, and, on appeal to the supreme court of Alabama, the decision was affirmed on the authority of the case of Tayloe *vs.* Dugger, in 66 Ala., 444, and the said decision is brought to this court on the present writ of error.

Points.

The facts of the case as above set forth make it manifest that there is no Federal question involved in the record. It is simply an action of ejectment by the plaintiffs against the defendant, and the two questions involved are, first, the statute of limitations, and, secondly, whether the payment of the notes in Confederate Treasury notes and bonds was such a payment as discharged the debt.

The latter question was settled in the case of Thorington *vs.* Smith, 8 Wall., 1, and the same principle recognized in the Confederate Note Case, 19 Wall., 548; R. R. Co. *vs.* King, 91 U. S., 3; Whitfield *vs.* Riddle, 52 Ala., 467; Waring *vs.* Lewis, 53 Ala., 615; Van Hoose *vs.* Bush, 54 Ala, 342, and in this case when before the supreme court of Alabama on a former appeal. See Tayloe *vs.* Dugger, 66 Ala. R., 444; also Hutchinson *vs.* Owen, 59 Ala., 326; Cummings *vs.* Bradley, 57 Ala., 224.

By an ordinance adopted by a constitutional convention of Alabama on September 21, 1865, it is provided that "in computing the time necessary to create the bar of the statute of limitations the time elapsing between the 11th of January, 1861, and September 21, 1865, shall not be estimated." See Revised Code of Ala., p. 53, Ordinance No. 5. The statute, therefore, commenced running September 21, 1865, and the bar would have been complete in ten years if there was no intervening disability. The plaintiffs were both minors, but each attained majority more than three years before the suit was brought. Infancy is no answer to the statute of limitations if the time prescribed in the statute has elapsed, and during three years of the time the plaintiffs have been of lawful age. Code of Ala., 1876, § 3236.

Now, this was the question and the only question decided by the supreme court of Alabama in this case. In questions relating to the jurisdiction of this court the true test is not whether the record exhibits an express statement that a Federal question was presented, but *whether such a question was decided* and decided adversely to the Federal right.

It must appear by clear and necessary intendment that the question must have been raised and must have been decided in order to have induced the judgment.

The rule may be stated to be that it must appear from the record of the State court that the Federal question was necessarily involved in the decision, and that the court

could not have given the judgment which they passed without deciding it, which judgment must be adverse to the Federal right.

Murray *vs.* Charleston, 96 U. S., 442.
Phillips' Practice, *seriatim*.

The following propositions have been settled by this court in the case of Murdock *vs.* Memphis, 20 Wall., 590:

1. That it is essential to the jurisdiction of this court over the judgment of a State court that it shall appear that one of the questions mentioned in the act of Congress must have been raised and presented to the court.

2. That it must have been decided by the State court, or that its decision was necessary to the judgment rendered in the case.

3. That the decision must have been against the right claimed or asserted by the plaintiff in error under the Constitution, treaties, laws, or authority of the United States.

4. These things appearing, this court has jurisdiction and must examine the judgment so far as to enable it to decide whether this claim of right was correctly adjudicated by the State court.

5. If it finds that it was rightly decided, the judgment must be affirmed.

6. If it was erroneously decided against the plaintiff in error, then this court must further inquire whether there is any other matter or issue adjudged by the State court which is sufficiently broad to maintain the judgment of that court, notwithstanding the error in deciding the issue raised by the Federal question. If this is found to be the case, the judgment must be affirmed without inquiring into the soundness of the decision on such other matter or issue.

Now, the main question, if not the only one, decided by